

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No. 975 (SS) of 2006

Kailash Chandra Pant,
Junior Engineer,
Provincial Division,
Public Works Department,
Champawat,
District – Champawat.

.....**Petitioner.**

Versus

1. State of Uttarakhand through Secretary, Public Works Department, Uttarakhand, Dehradun.
2. Chief Engineer Grade – I, Public Works Department, Uttarakhand, Dehradun.
3. Chief Engineer, Public Works Department, Kumaon Range, Almora.

.....**Respondents.**

Hon'ble M.M. Ghildiyal, J.

Heard Sri S.N. Babulkar, Sr. Advocate, assisted by Sri Prabhakar Joshi, learned counsel for the petitioner and Sri N.P. Shah, learned Standing Counsel for the State of Uttarakhand on behalf of respondents.

By means of this writ petition, petitioner has prayed for the following relief:

- i. Issue a writ, order or direction in the nature of Mandamus directing the respondents to include the name of the petitioner in the seniority list according to his seniority.*
- ii. Issue a writ, order or direction in the nature of Mandamus directing the respondents to promote the petitioner on the post of Assistant Engineer (Civil).*

- iii. *Issue a writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- iv. *Award to the cost of the petition.*
- v. *Issue a writ, order or direction in the nature of Certiorari to quash the impugned order dated 18.09.2006 passed by Chief Engineer Level – I contained as Annexure No. 10 to the writ petition.*

Later on petitioner has prayed for deletion of prayer no. 2 and he was permitted to delete the same. Thereafter, petitioner has moved amendment application, by which he has challenged the order dated 18.09.2006 passed by Chief Engineer Level – I, rejecting the representation of the petitioner.

The facts of the case are that petitioner was initially appointed on 17.11.1983 as Junior Engineer (Technical) on adhoc basis with the respondent department. On 07.01.1991, the services of the petitioner were regularized on the post of Junior Engineer (Technical) under Regularization Rules. On 06.01.1993, the services of the petitioner have been confirmed on the post of Junior Engineer (Technical). On 03.06.2006, respondents issued seniority list in respect of Junior Engineer (Technical), however, in the seniority list the name of the petitioner was not included. Consequently, petitioner made representation before respondents with a request to include his name in the seniority list of Junior Engineer (Technical) and promote him on the post of Assistant Engineer.

Since no heed was paid by the respondents, petitioner was constrained to file present writ petition.

Counter affidavit has been filed by the respondents. The stand taken by the respondents is that petitioner was initially

appointed as Junior Engineer (Technical) in the year 1983. However, later on, he was selected by the Public Service Commission on the post of Junior Engineer (Civil), that is why his name has not been shown in the gradation list of Junior Engineer (Technical) and his name is being shown in the gradation list of Junior Engineer (Civil).

I have perused the record. In the year 1983, petitioner was appointed on adhoc basis as Junior Engineer (Technical), which is clear from the appointment letter. The services of the petitioner were regularized in the year 1991 on the post of Junior Engineer (Technical), which is also clear from letter of regularization. Again, petitioner was confirmed on 06.01.1993 on the post of Junior Engineer (Technical), which is clear from the letter of confirmation. Vide order dated 19.03.2002, Chief Engineer, PWD, Kumaon Region, declared the petitioner as Gazetted Officer.

Petitioner has filed supplementary affidavit. In the supplementary affidavit, petitioner has annexed the order issued by Executive Engineer in the year 1990 whereby petitioner was directed to look after Technical as well as Civil work. A certificate on 19.12.2007 was also issued by the Executive Engineer whereby it is certified that petitioner is working as Junior Engineer (Technical).

It is not disputed that qualification prescribed for the post of Junior Engineer (Technical) and Junior Engineer (Civil) in PWD are the same and in fact the work and nature of the post are also same. It is also not disputed by the parties that sometimes, Junior Engineer (Technical) is directed to look after the work of Junior Engineer (Civil) and Junior Engineer (Civil) is directed to look after the work of Junior Engineer (Technical) and posts are interchangeable.

Since the petitioner's services were regularized and confirmed on the post of Junior Engineer (Technical), I am unable to understand under what circumstance Chief Engineer Level – I, PWD rejected the representation of the petitioner by which he has demanded to include his name in the seniority list of Junior Engineer (Technical).

In these circumstances, I deem it fit and proper to direct the Chief Engineer Level – I, PWD, Uttarakhand, Dehradun to reconsider the case of the petitioner in the light of observation made above in the judgment ignoring the finding given by him in his order dated 18.09.2006 within a period of two months from the date of production of certified copy of this order.

Writ petition is allowed. Order dated 18.09.2006 is quashed. All the pending applications are disposed of accordingly. No order as to costs.

(M.M. Ghildiyal, J.)

December 27, 2007
SKS